

1 STEPHANIE M. HINDS (CABN 154284)
2 Acting United States Attorney

3 HALLIE HOFFMAN (CABN 210020)
4 Chief, Criminal Division

5 MICHAEL G. PITMAN (DCBN 484164)
6 Assistant United States Attorney
7 150 Almaden Boulevard, Suite 900
8 San Jose, CA 95113
9 Telephone: (408) 535-5040
10 Facsimile: (408) 535-5081
11 Email: michael.pitman@usdoj.gov

12 COREY J. SMITH (MABN 553615)
13 Senior Litigation Counsel
14 United States Department of Justice

15 Attorneys for United States of America

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 CARLOS E. KEPKE,

23 Defendant.

24 Criminal No. 3:21-CR-00155-JD

25 STIPULATION AND [PROPOSED] ORDER
26 AUTHORIZING DISCLOSURE OF
27 TAXPAYER RETURN INFORMATION
28 AND PROTECTIVE ORDER

29 With the agreement of the parties, the Court enters the following Order:

30 Upon receipt of a discovery request, the United States will produce documents and other
31 materials pertaining to Defendant and the charged offenses to defense counsel. The discovery to be
32 provided by the government in this case will include sensitive proprietary, financial, banking, and tax
33 return information, including the following categories of evidence (collectively, “Protected
34 Information”):

- 35 1. Personal Identifying Information of individuals (other than his or her name), including the
36 person’s date of birth, social security number, residence or business address, telephone
37 numbers, email addresses, driver’s license number, professional license number, family

- members names, or criminal histories (“Personal Identifying Information”);
2. Financial information of individuals or businesses, including bank account numbers, credit or
debit card numbers, account passwords, contact information, and taxpayer identification
numbers, but not including parties’ names (“Financial Information”);
3. Medical records or other patient information of individuals covered by the Health Insurance
Portability and Accountability Act of 1996 (HIPAA) (“Medical Information”); and
4. Tax Return Information, as defined by Title 26, United States, Code, Section 6103(b)(1) and
(2), pertaining to individuals and entities other than Defendant.

To ensure that Protected Information is not subject to unauthorized disclosure or misuse,

IT IS HEREBY ORDERED that, pursuant to Fed. R. Crim. P. 16(d)(1), Defendant, defense
counsel of record, their investigators, assistants, and employees, as well as any experts or consultants
retained to assist with the preparation of the defense in this case (collectively, “the defense team”), may
review all discovery provided by the government in unredacted form. However, no member of the
defense team may provide any person who is not a member of the defense team with copies of, or permit
any person who is not a member of the defense team to make copies of, or have unsupervised access to,
any discovery provided by the government that contains Protected Information, unless the Personal
Identifying Information, Financial Information, and/or Medical Information has first been **entirely**
redacted from the discovery materials.

All members of the defense team shall be provided a copy of this Order, and shall initial and date
the Order reflecting their agreement to be bound by it, before accessing any discovery provided by the
government.

The discovery provided by the government may only be used for the specific purpose of
preparing or presenting a defense in this matter, unless specifically authorized by the Court.

This Order shall also apply to any copies made of any materials covered by this Order.

IT IS FURTHER ORDERED that discovery provided by the government that includes tax
return information of third parties, as defined by 26 U.S.C. 6103(b)(1) and (2), is provided pursuant 26
U.S.C. 6103(h)(4). Defendant and his counsel shall maintain the confidentiality of all tax return
information provided by the government in discovery, other than material that clearly pertains to

1 Defendant and does not contain tax return information regarding any other individual or entity, in
2 accordance with 26 U.S.C. 6103(a) and this Order.

3 **IT IS FURTHER ORDERED** that neither Defendant nor any member of the defense team shall
4 provide copies of any discovery provided by the government – if the material constitutes or contains
5 Protected Information within the meaning of this Order – to any person who is not a member of the
6 defense team, or make any public disclosure of the same, other than in a court filing, unless specifically
7 authorized by the Court. No provision of this Order shall prevent defense counsel from reviewing
8 discovery provided by the government with potential trial witnesses, as necessary to prepare for trial. If
9 a party files a pleading that references or contains or attaches Protected Information, that filing must be
10 under seal.¹

11 **IT IS FURTHER ORDERED** that defense counsel shall return materials subject to this Order
12 (including any copies) to the United States within 28 days after whichever event occurs last in time:
13 dismissal of all charges against Defendant; Defendant's acquittal; Defendant's sentencing; or the
14 conclusion of any direct appeal. After the United States receives documents and materials subject to this
15 Order, it shall maintain those documents and materials until the period for filing a motion under 28
16 U.S.C. § 2255 has expired. After the statutory period for filing a motion under 28 U.S.C. § 2255 has
17 expired, the United States is free to destroy documents and materials subject to this Order. If Defendant
18 is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the United States will provide
19 counsel with the documents and materials subject to this Order under the terms of this Order.
20 Defendant's attorney in any motion under 28 U.S.C. § 2255 shall return the documents and materials
21 subject to this Order within 28 days after the district court's ruling on the motion or 28 days after the
22 conclusion of any direct appeal of the district court's order denying the motion, whichever is later. This
23 stipulation is without prejudice to either party applying to the Court to modify the terms of any
24 protective order. This Court shall retain jurisdiction to modify this Order upon motion of either party

25 \\

26 \\

27

28

¹ This Order authorizes such filings under seal and the parties are not required to seek additional
authorization from the Court to do so.

1 even after the conclusion of district court proceedings in this case.

2 The undersigned Assistant United States Attorney certifies that he has obtained approval from
3 counsel for the defendant to file this stipulation and proposed order.

4

5 **IT IS SO STIPULATED.**

6 DATED: May 20, 2021

STEPHANIE M. HINDS
Acting United States Attorney

s/ Michael G. Pitman
MICHAEL G. PITMAN
Assistant United States Attorney
COREY J. SMITH
Senior Litigation Counsel

10 Attorneys for United States of America

11

12

13 s/ Grand P. Fondo
14 GRANT P. FONDO

15 Specially Appearing for Defendant Carlos E. Kepke

16

17

18 **IT IS SO ORDERED.**

19 DATED:

THE HON. JAMES DONATO
United States District Judge